

BEFORE THE STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS  
STATE OF MISSOURI

STATE BOARD OF EMBALMERS,	)	
AND FUNERAL DIRECTORS	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: EMB 12-003-PV
	)	
EDDIE SWARNES	)	
	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DISCIPLINARY ORDER**

At its regularly schedule meeting on September 28, 2011, at approximately 11:30 a.m. and pursuant to notice described in the Findings of Fact, the State Board of Embalmers and Funeral Directors (Board) took up the probation violation complaint alleging that Eddie Swarnes (Swarnes) had failed to comply with the terms of his probation. The Board convened the hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

The board appeared through Division of Professional Registration Legal Counsel Sharon Euler. Swarnes appeared in person but was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the board's legal advisor at the September 28, 2011 hearing, during deliberations and in the preparation of this order.

### Findings of Fact

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo<sup>1</sup>, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Swarnes is an individual who registered his address with the Board as 3923 Tholozan, St. Louis, Missouri 63116.

3. Swarnes holds funeral director license number 006143. The license is current and active.

4. Swarnes and the Board entered in the "Settlement Agreement between the State Board of Embalmers and Funeral Directors and Eddie Swarnes" (Settlement Agreement) signed by Swarnes on September 9, 2007 and by the Board on September 17, 2007. The Settlement Agreement became effective 15 days after the Board's signature on October 2, 2007.

5. In the Settlement Agreement, Swarnes and the Board agreed that Swarnes' funeral director's license was subject to discipline due to the finding by the Circuit Court of St. Louis County that Swarnes violated certain provisions of Chapter 436, RSMo and that Swarnes failed to trust

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.

properly preneed funds entrusted to him by consumers in the case of *State of Missouri v. Eddie J. Swarnes, et al.*, case number 05CC-003584.

6. The Settlement Agreement Disciplinary Order placed Swarnes' funeral director license on probation for a period of five years beginning on October 2, 2007 and continuing until October 1, 2012, subject to certain enumerated terms and conditions.

7. The terms and conditions of probation are set forth in paragraph II.2 found on pages 2 through 5 of the October 2, 2007 Settlement Agreement Disciplinary Order.

8. Subparagraph D of paragraph II.2. of the terms and conditions of probation requires Swarnes to file periodic written reports of compliance and states:

Swarnes shall submit written reports to the Board no later than January 1 and July 1 of the disciplinary period stating truthfully whether there has been compliance with all of the requirements of this settlement agreement. It is Swarnes' responsibility to ensure that the reports are submitted by the dates set forth above. The first such report is due by January 1, 2008.

9. The Board received Swarnes' written reports of compliance for January 1, 2008, July 1, 2008, January 1, 2009 and July 1, 2009.

10. The Board did not receive written reports of compliance from Swarnes which were due on January 1, 2010, July 1, 2010, January 1, 2011, and July 1, 2011.

11. On August 31, 2011 the Board notified Swarnes of the September 28, 2011 probation violation. The Board sent notice of the hearing, including the time, date and location of the hearing, as well as a copy of the Probation Violation Complaint to Swarnes at his last known address on file with the Board. The Board sent the notice by certified mail. The Board received the "green card" back from Swarnes signed by Swarnes indicating receipt of the Notice of Hearing.

12. During the September 28, 2011 hearing, counsel for the Board offered and the Board admitted the following exhibits:

- a. Exhibit 1: PROMO Licensing screen showing licenses
- b. Exhibit 2: Settlement Agreement and blank compliance report form
- c. Exhibit 3: Notice of Hearing and probation violation complaint

13. During the September 28, 2011 hearing, the Board heard testimony from the following witness on behalf of the Board: Sandy Sebastian, Executive Director.

14. During the September 28, 2011 hearing, Swarnes offered and the Board admitted the following exhibits:

- a. Exhibit A: Compliance Report for January 1, 2010 signed and dated by Swarnes on September 28, 2011.
- b. Exhibit B: Compliance Report for July 1, 2010 signed and dated by Swarnes on September 28, 2011.

- c. Exhibit C: Compliance Report for January 1, 2011 signed and dated by Swarnes on September 28, 2011.
- d. Exhibit D: Compliance Report for July 1, 2011 signed and dated by Swarnes on September 28, 2011.
- e. Exhibit E: Email correspondence between Swarnes and the Board during the period of Swarnes' probation issued in the October 2, 2007 Settlement Agreement.

15. During the September 28, 2011 hearing, Swarnes testified on his own behalf as to the alleged violations contained in the probation violation report. Swarnes stated that he sent e-mails to the Board that were close in time to January 1, 2010, July 1, 2010, January 1, 2011 and July 1, 2011 but not on the actual dates. He stated some were prior in time to the deadline set in the Settlement Agreement and some were after the deadline set in the Settlement Agreement. He stated the e-mails reported changes in his employment to the Board but not statements regarding his compliance with the October 2, 2007 Settlement Agreement. He stated that he thought the e-mails were sufficient to comply with the requirements of the Settlement Agreement.

#### Conclusions of Law

16. The Board possesses jurisdiction over this matter pursuant to Section 324.042, RSMo, and pursuant to Section II, paragraphs 3, 4, and 7 on pages 6 and 7 of the October 2, 2007 Settlement Agreement.

17. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

#### Violations of Probation

18. Swarnes violated paragraph II.2.D. of the October 2, 2007 Settlement Agreement Disciplinary Order by failing to timely file his written reports of compliance due on January 1, 2010, July 1, 2010, January 1, 2011 and July 1, 2011.

19. Swarnes' failure to timely submit his written reports of compliance due on January 1, 2010, July 1, 2010, January 1, 2011 and July 1, 2011, as detailed in paragraphs 3 through 15 above, constitutes cause to further discipline his funeral director license pursuant to § 324.042, RSMo and paragraph II.2.D of the October 2, 2007 Settlement Agreement Disciplinary Order.

#### Decision and Order

It is the decision of the State Board of Embalmers and Funeral Directors that Eddie Swarnes violated the terms of the Settlement Agreement Disciplinary Order, and Swarnes' funeral director license is, therefore, subject to further disciplinary action.

The previous Disciplinary Order is hereby vacated and set aside. The State Board of Embalmers and Funeral Directors orders that the funeral director license (license number 006143) of Eddie Swarnes is hereby placed on **probation** from the effective date of this Order until October 1, 2014.

*Terms and Conditions of Probation*

20. Swarnes' probation will be subject to the following terms and conditions during the disciplinary period:

*General Requirements*

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board

or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;

- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;



- i. Licensee shall not serve as the supervisor of any funeral director apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;
- j. Licensee shall provide a copy of this Order to any employer engaged in the funeral industry within 5 business days of the commencement of his employment or within 5 days of Licensee's receipt of this Order.

21. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's funeral director's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's funeral director's license.

22. The Board shall enter no order imposing further discipline on Licensee's funeral director's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

23. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

24. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Licensee's funeral director's license. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

25. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Entered this 12<sup>th</sup> day of October, 2011.

**State Board of Embalmers and Funeral Directors**

Sandy Sebastian  
Sandy Sebastian, Executive Director